

(4)

c.s. 100

IN THE HIGH COURT OF JUDICATURE, AT BILASPUR (C.G.)

W.P. NO. 2962 2004

Petitioner

: Smt. Sheela Jaiswal,
W/o. Santosh Kumar Jaiswal,
aged about 27 years,
R/o. Bhagwanpur, Tah. Bharatpur
(Janakpur), Distt. Korea (C.G.).

Versus

Respondents

- RS 1. State of Chhattisgarh,
Ministry of Mahila Bal Vikas,
through its Secretary,
Secretariat, Raipur (C.G.)
- RS 2. Janpad Panchayat, Bharatpur,
through its Chief Executive
Officer, Bharatpur, Distt. Korea.
- RS 3. Pariyojana Adhikari,
Mahila Bal Vikas, Bharatpur,
Distt. Korea (C.G.)
- S 4. Gram Panchayat Bhagwanpur,
through Sarpanch-Bharat Baiga,
Bhagwanpur, Tah-Bharatpur,
Distt. Korea (C.G.).
- RS 5. Smt. Manju Jaiswal,
W/o. Vijay Kumar Jaiswal,
aged about 32 years,
R/o. Bhagwanpur,
Tah. Bharatpur, Distt. Korea.

P.R. No. 2953/04
Presented by Shri S.C. Gupta
dated 27-8-04

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Clerk to A. G. Bilaspur



**PETITION UNDER ARTICLES 226/227 OF THE
CONSTITUTION OF INDIA**

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HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH

Writ Petition No. 2962 of 2004

Smt. Sheela Jaiswal

- Versus -

State of Chhattisgarh and others

ORDER

POST FOR 8-2-2006

Sd/-
Fakhruddin
Judge

7-2-2006

HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH

Writ Petition No. 2962 of 2004

Smt. Sheela Jaiswal

-Versus -

State of Chhattisgarh and others

Shri B.P. Gupta, counsel for the petitioner.

Shri Sandeep Dubey, Government Advocate for the
State/respondents No.1 & 3.

Shri Bhaskar Payasi, Advocate for respondent no. 2.

Shri Prakash Tiwari, Advocate for respondent no. 5.

ORDER

Per Hon'ble Fakhruddin, J.

Heard.

2. The petitioner has filed this petition under Article 226/227 of the Constitution of India against the order dated 30-7-2004 as per Annexure P-5 passed by the respondent no. 2/Chief Executive Officer, Janpad Panchayat, Bharatpur whereby he has directed the Project Officer, Mahila Bal Vikas, Bharatpur to issue appointment order in favour of respondent no. 5/Manju Jaiswal and further against the order dated 31-7-2004 Annexure P-6 passed by the respondent no. 3/Project Officer whereby the appointment order has been issued in favour of the respondent no. 5/Smt. Manju Jaiswal.

3. Briefly stated the facts of the case are that the petitioner along with 3 other persons namely Smt. Phulwa, Smt. Manju Jaiswal and Smt. Chandrakali, applied for the post of Anganwadi Karyakarta before the respondent no. 4. The application Annexure P-1 of the petitioner contained a

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Graduation certificate, Typing certificate and Stitching certificate. According to the petitioner, Smt. Phulwa secured 57% marks in Class 8th, Smt. Manju Jaiswal secured 49.30% marks in Class 8th and she is a Green Card holder, and Smt. Chandrakali secured 42.30% marks in Class 8th and she is a Scheduled Tribe candidate. It is submitted that the procedure for appointment of Anganbadi Karyakarta is regulated by the Order No. F-8-3/95/50-2 Bhopal dated 29-10-1996, which has been filed as Annexure R-1/1 by the respondents No. 1 and 3. According to the procedure, immediately on sanction or vacancy of post of Anganbadi Karyakarta, the Supervisor shall ask from the Gram Panchayat for a panel of names of 3 to 5 persons. He shall also inform the Gram Panchayat about the prescribed qualification. Then the Gram Panchayat is bound to forward the panel of names within 15 days. Then the Supervisor shall scrutinize the names of panel whether they have the required qualification or not and thereafter he will forward his recommendation to the Janpad Panchayat through Child Development Project Officer. Thereafter it will be the duty of the Supervisor and the Project Officer to completely scrutinize the panel and then only forward their recommendations to the Janpad Panchayat. The Project Officer shall remain present in the meeting of the Janpad Panchayat to ensure that appointment is given to the eligible person. Then it will be binding on the Janpad Panchayat to issue appointment order within 3 weeks from the date of receipt of resolution for appointment. If the Janpad Panchayat does not take a decision regarding appointment, then the appointment can be made by the Project Officer after approval of the Collector.

4. Learned counsel for the petitioner contended that as per Annexure P-8 dated 12-2-2004, the Supervisor has forwarded his recommendation to the Project Officer in which he has

written that he has minutely scrutinized the names of panel of 4 persons namely Smt. Sheela Jaiswal, Smt. Phulwa, Smt. Manju Jaiswal and Smt. Chandrakali and according to their qualifications, he found that Smt. Sheela Jaiswal is suitable candidate in comparison to other candidates and he recommended the name of the petitioner. The respondent no. 5/Smt. Manju Jaiswal brought political interference and she wrote a letter Annexure P-11 to the Minister for her appointment as Anganbadi Karyakarta, Bharatpur, and on this letter/memo, the Minister made endorsement that Smt. Manju Jaiswal's case is recommended.

5. Learned counsel for the petitioner pointed out that as per Annexure P-10 dated 7-6-2004, the name of petitioner Smt. Sheela Jaiswal was unanimously recommended by the Sabha. However on 24-7-2004 as per Annexure P-12, the respondent no. 5 again submitted another letter to the Minister about her appointment to the post of Anganbadi Karyakarta. The Minister made an endorsement and directed the Chief Executive Officer, Janpad Panchayat, Janakpur to ensure appointment within 15 days. The Chief Executive Officer, Janpad Panchayat, Bharatpur within 7 days wrote a letter as per Annexure P-5 dated 30-7-2004 bearing no. 822/मुकाओ/जप/2004. In the said letter, it has been clearly written that the Supervisor has found Smt. Sheela Jaiswal suitable and the Janpad Panchayat has not recommended Smt. Manju Jaiswal but since there is an order of the Minister in the application of Smt. Manju Jaiswal, appointment order to Smt. Manju Jaiswal be issued relaxing all the rules.

6. The respondents on the other hand opposed the petition on the ground that the petition is not maintainable inasmuch as alternative remedy is available. The appointment is sought to be justified on the ground that no illegality has been committed as the respondent no. 5 is only one who is middle

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passed candidate. The State however stated that it has no role in the process of appointment. The respondent no. 2/Janpad Panchayat has stated the same about educational qualification of the candidates. The respondent no. 5 raised the question of alternative remedy. It is also contended that the respondent No.5 is a poor lady and being a poor lady, she approached the Minister.

7. The present is a case where admittedly the Supervisor recommended after scrutinizing the petitioner's case on 12-2-2004. In between the respondent no. 5 approached the Minister and the Minister intervened in the case. The Project Officer then recommended the case of the respondent no. 5 pursuant to intervention of the Minister on ~~20-2~~-2004. The Janpad Panchayat however in the meeting held on 7-6-2004, passed a resolution as per Annexure P-10 for petitioner's appointment. The respondent no. 5 again submitted letter (Annexure P-12) dated ~~25~~-7-2004 to the Minister. This time, the Minister issued a specific order that appointment order be issued within 15 days. The Chief Executive Officer thereafter succumbed to the pressure and Annexure P-5 is the letter dated 30-7-2004 in which it has been stated that relaxing all the rules, appointment order be issued and thus relaxing all the rules, appointment order to respondent no. 5 has been issued. In the instant case, interference by the Minister of the department has been made twice. Earlier the case of the respondent no. 5 was recommended and then second time it was directed that appointment be made within 15 days. The subordinate officer succumbed to the pressure and he has specifically stated it in Annexure P-5 that since there is an order of Minister, appointment order to Smt. Manju Jaiswal be issued relaxing all the rules. Annexure P-5 is relevant and quoted below:-

(104)

कार्यालय जनपद पंचायत अम्बिकापुर, जिला कोरिया (बैकुण्ठपुर)

क्रमांक 822/मु.का.अ./ज.प./2004

भरतपुर, दिनांक 30-7-04

प्रति,

परियोजना अधिकारी,
महिला बाल विकास, भरतपुर

विषय:—आंगनवाड़ी केन्द्र (बैगापारा) भगवानपुर में कार्यकर्ता पद पर नियुक्ति बाबत।

संदर्भ:—आपका पत्र क्रमांक 117/एफ (अस्पष्ट)

संदर्भित पत्र के परिप्रेक्ष्य में लेख है कि आंगनवाड़ी केन्द्र (बैगापारा) भगवानपुर में कार्यकर्ता पद हेतु कुल 04 उम्मीदवारों कमशः 1. श्रीमती शीला जायसवाल 2. श्रीमती फूलवा कंवट 3. श्रीमती मंजू जायसवाल 4. श्रीमती चन्द्रकली है जिसमें:-

1. ग्राम पंचायत भगवानपारा में शैक्षणिक योग्यता के अनुसार प्राथमिकता श्रीमती शीला जायसवाल को दी है। जो पैनल में स्पष्ट परिलक्षित है।
2. पर्यवेक्षक ने श्रीमती शीला जायसवाल को उपयुक्त माना है।
3. जनपद पंचायत भरतपुर, श्रीमती मंजू जायसवाल को अनुमोदन नहीं किया है। इसके बावजूद चूंकि श्रीमती मंजू जायसवाल के आवेदन पर मंत्री महोदया का आदेश है अतएव सभी नियमों को शिथिल करते हुए श्रीमती मंजू जायसवाल का नियुक्ति आदेश जारी करें। इस परिपत्र पर विलंब अवांछनीय है।

संलग्न:—मूल नस्ती।

सही/अस्पष्ट
मुख्य कार्यपालन अधिकारी
जनपद पंचायत भरतपुर
जिला कोरिया

8. Such interference by the Minister of the Department is unfortunate. Such action of the Minister undermine the authority and rule of law. This is wholly arbitrary. The Hon'ble Supreme Court in the case of Ramana Dayaram Shetty v. International Airport Authority of India reported in (1979) 3 SCC 489 has held that:-

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesses, the Government cannot act

arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norms in any particular case or cases, the action of the Government would be liable to be struck down....."

9. The Hon'ble Supreme Court in the case of Common Cause, A Registered Society -v- Union of India and others reported in (1996) 6 SCC 530 in para 22 has held that :-

"22. The Government today- in a welfare State- provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people....."

10. In the instant case, the Minister committed breach of the trust reposed by the people and acted very unfairly in directing for appointment to a candidate relaxing all rules. Why rules should be relaxed. The order states that because of recommendations of the Minister, the respondent no. 5 has been appointed. A blue-eyed person of a Minister has been appointed relaxing all rules. The petitioner has been deprived of her rights relaxing the procedure. It is nothing but highhandedness and abuse of process of law and authority.

11. The Hon'ble Supreme Court in the case of Shivsagar Tiwari -v- Union of India reported in (1996) 6 SCC 558 after

elaborately considering earlier cases including common cause case held that misuse of power by a public official is actionable in tort.

12. It is a duty of the Court to intervene in the matter when there is misuse of power. It is disturbing feature that the respondent No.5 approached the Minister and readily recommendations are obtained and second time even direction has been issued to public authorities to give appointment relaxing all rules. The appointment order has been issued blatantly violating all the rules. It is high time for the State to take steps and issue instructions, so that such situation is avoided. The Chief Secretary of the State to do needful.

13. Having considered the facts and circumstances of the case and material on record, and in view of the discussion made in the foregoing paragraphs, appointment of respondent no. 5 is wholly illegal and contrary to law and liable to set aside. Accordingly, the Annexure P-5 dated 30-7-2004 passed by the respondent no. 2/Chief Executive Officer, Janpad Panchayat, Bharatpur and Annexure P-6 dated 31-7-2004 passed by the Project Officer, Bharatpur are set aside. The State is directed to issue appropriate orders within a period of three weeks from the receipt of a copy of this order.

14. The petition is allowed with costs. Counsel fee Rs.5,000/-, if certified. Liberty is given to the State to recover costs from the erring authority, if so desire.

Sd/-
Fakhruddin
Judge